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BEFORE THE  
STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS

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|---------------------------------------|---|-------------------|
| In the Matter of the Denial of        | ) |                   |
| the Permit Application of Jerry's     | ) |                   |
| Cherries, Inc., Gerald Mancheski      | ) | Case No. IH-95-03 |
| and Arlene Mancheski for Lands-       | ) |                   |
| spreading Sites Located in the Town   | ) |                   |
| of Sevastopol, Door County, Wisconsin | ) |                   |

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On June 8, 1994, Jerry's Cherries, Inc. requested approval of three landspreading sites located in Section 20 of the Town of Sevastopol, Door County, by submitting a landspreading site evaluation form and supporting documents to the Department of Natural Resources. On January 18, 1995, the Department denied the request to landspread wastewater on said property.

On February 13, 1995, the Department received a request for a contested case hearing pursuant to § 227.42, Stats., from Attorney James O. Ebbeson on behalf of Jerry's Cherries, Inc. On March 21, 1995, the Department forwarded the file to the Division of Hearings and Appeals for hearing. Pursuant to due notice a hearing was held on May 25, 1995 in Sturgeon Bay, Wisconsin before Mark J. Kaiser, Administrative Law Judge.

In accordance with §§ 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Jerry's Cherries, Inc., by

James Ebbeson, Attorney  
20 South First Street  
Sturgeon Bay, Wisconsin 54235

Wisconsin Department of Natural Resources, by

Charles R. Hammer, Attorney  
P. O. Box 7921  
Madison, Wisconsin 53707-7921

## FINDINGS OF FACT

1. Jerry's Cherries, Inc., the applicant, is a cherry grower and is located at 6186 Tagge Road, Sturgeon Bay, Wisconsin. Jerry's Cherries, Inc. owns and operates a cherry processing facility located at the intersection of Dunn Road (County Trunk Highway "HH") and Martin Road in the Town of Sevastopol, Door County, Wisconsin. Gerald and Arlene Mancheski are the principal shareholders of Jerry's Cherries, Inc.

2. A large quantity of water is used in the cherry processing process. The water is used primarily to keep the cherries cool and to move them through the facility. Jerry's Cherries, Inc. has a WPDES permit (Number WI-0051985) to landspread the wastewater generated by its cherry processing facility.

3. Pursuant to the permit, Jerry's Cherries, Inc. is allowed to landspread the wastewater on land it owns on Tagge Road. This land is located approximately ten miles south of the cherry processing facility. The wastewater must be hauled in tanker trucks through the City of Sturgeon Bay from the processing facility to the permitted landspread site.

4. Jerry's Cherries, Inc. applied for an amendment to its landspreading permit. The application sought permission to landspread on three sites near the cherry processing plant. The three sites are identified in the application as:

- 1) L1, a 2.90 acre site with the legal description of the NE 1/4, NW 1/4, Section 20, Township 28 N, Range 26 E, Town of Sevastopol;
- 2) L2, a 1.86 acre site with the legal description of the NW 1/4, NW 1/4, Section 20, Township 28 N, Range 26E, Town of Sevastopol; and
- 3) L3, a 1.30 acre site with the legal description of the NW 1/4, NW 1/4, Section 20, Township 28 N, Range 26 E, Town of Sevastopol.

5. The proposed landspreading sites are more convenient for the applicant. Using the existing permitted site involves approximately one hour of travel time from the processing plant to the landspreading site (a half hour each direction) and transferring the wastewater from a tanker to the landspreading equipment at the site.

6. The landspreading of wastewater is only done during the cherry processing season. The cherry processing season lasts between two and three weeks beginning between

July 20 and 25th. The applicant processes between 200,000 and 300,000 pounds of cherries per season. The applicant processes only the cherries it grows. The applicant does not process cherries for any other growers.

7. In the material filed with the Department in support of its application for amendment to its landspreading permit, the applicant sought permission to landspread 13,500 gallons of wastewater per acre per week for a period between four and six weeks. This would involve a total amount of wastewater between 327,240 and 490,860 gallons per season. At the hearing, the applicant estimated the total amount of wastewater landspread would be a maximum of 100,000 gallons per season. Assuming a two week season this would involve 8333 gallons of wastewater per acre per week.

8. The wastewater spread contains no pesticides or other chemical residue. The wastewater does contain nitrogen and other nutrients. The wastewater is monitored for biochemical oxygen demand (BOD). Water with high BOD readings is not necessarily unsafe to drink; however, the nutrients feed and promote the growth of bacteria. Therefore if water with high BOD reading mixes with groundwater it will exacerbate any existing contamination problem.

9. The proposed landspreading site have the following mean separation distances from ground surface to bedrock:

- 1) L1 - 21.97 inches;
- 2) L2 - 29.06 inches; and
- 3) L3 - 25.25 inches.

The type of soil at the proposed site is loam and sandy loam. The area is generally level with a slope between one and three percent.

10. Although the soil at the proposed landspreading site is relatively shallow, it is adequate to handle the amount of wastewater which will be landspread. The landspread would occur in late July and early August. The Department's suggested summer evaporation rate of .7 inches of water/acre/ week is approximately equal to the amount of wastewater which would be landspread. Any wastewater which does not evaporate should be absorbed through vegetative evapotranspiration. Even if an above average rain event occurred during the cherry processing season, the soil at the three proposed landspreading sites can handle the amount of wastewater the applicant estimates will be landspread.

11. The area surrounding the applicant's cherry processing plant exhibits significant karst features. Karst is a region made up of porous limestone containing deep fissures and sinkholes. Karst features are a concern because they would allow the landspread water to reach the groundwater without being filtered by the soil.

12. The three proposed landspreading sites do not contain any open bedrock or sinkholes; however, they do exhibit surface expressions of filled sinkholes. The filled sinkholes and any other karst features in the proposed landspreading sites will allow the wastewater to travel rapidly to the groundwater.

13. There is no direct evidence that the applicant's cherry processing plan has contaminated groundwater in the area. However, the area has a history of reoccurring groundwater contamination.

#### DISCUSSION

A significant dispute between the applicant and the Department is whether the proposed landspreading sites have karst features. The applicant's expert did not note any karst features within the boundaries of the three landspreading sites. However, the Department witnesses noted surface expressions of sinkholes, a karst feature. The landspreading sites are located within a mapped fractured and karst terrain. The area immediately surrounding the sites contains open bedrock, bedrock crevices and visible fracture systems. Landspreading wastewater high in nutrients in an area with karst features has the potential to exacerbate an existing groundwater contamination problem.

The applicant argues that the proposed landspreading sites should be approved because transporting the wastewater to the approved landspreading site is burdensome and the time period over which the landspreading will occur is short (two to three weeks). The fact that the time period over which the landspreading will occur is short is as much a reason for not approving the proposed sites as approving them. Although transporting the wastewater to the current landspreading site is clearly burdensome to the applicant, it is a burden for a short period of time. The risk of contributing to an existing groundwater contamination problem exceeds the benefit of reducing this burden to the applicant.

#### CONCLUSIONS OF LAW

1. The proposed sites are not acceptable for landspreading of wastewater pursuant to the standards set forth in §NR 214.17, Wis Adm Code.

2. Pursuant to §NR 150.03(8)(i)2, Wis. Adm. Code, the proposed amendment to the landspreading permit is a type IV action. Type IV actions are exempt from the requirements of chapter NR 150 and do not require the preparation of an environmental impact statement.

3. The Division of Hearings and Appeals has the authority pursuant to § 227.43(1)(b), Stats., to issue the following order.

ORDER

The denial of the application to amend the landspreading permit of the applicant is affirmed.

Dated at Madison, Wisconsin on July 5, 1995.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 267-2744

By Mark Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

ORDERS\JERRY SCH.LAM

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.